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Peter Worthington Hamilton

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

CHANG, VICTOR S

ART UNIT

PAPER NUMBER

1771

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/716,740
Filing Date: November 20, 2000
Appellant(s): HAMILTON ET AL.

David Mattheis
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 23, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments*

The appellants' statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of the Claimed Subject Matter*

The summary of the claimed subject matter contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellants' statement of the grounds of rejection to be reviewed on appeal in the brief is substantially correct. The changes are as follows:

Claims 1-11, 13-18, 38-48, 50-55, 75, 80, 81, 86-91 and 93-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of Reed et al. (US 4054697), and further in view of the admitted prior art.

Claims 12, 49, 92 and 102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of the admitted prior art, and further in view of Reed et al. (US 4054697) and Kovac (US 3819467).

(7) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Prior Art of Record

US 2,338,749	Wilbur	1-1944
US 4,054,697	Reed et al.	10-1977
US 3,819,467	Kovac	6-1974

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

I. Claims 1-11, 13-18, 38-48, 50-55, 75, 80, 81, 86-91 and 93-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of Reed et al. (US 4054697), and further in view of the admitted prior art.

Wilbur's invention relates to wrappers of flexible paper or other equivalent sheet material (column 1, lines 1-3). Wilbur teaches that the invention can be embodied in a label, wrapper, envelope or other article of flexible sheet material intended for other uses (page 1, column 2, lines 34-37). Fig. 7 shows that an embodiment in which a multiplicity of pin punctures 16 each of which is surrounded by an outstanding tubular burr 17, and surrounded by a coating of permanently sticky or tacky adhesive 18. The outstanding burrs 17 serve as means for normally shielding the adhesive coating against accidental contact with other objects. When end portions are overlapped and pressed together, the burrs or bosses 17 are collapsed, the ends are united by the adhesive (page 2, column 1, line 48 to column 2, line 8).

For independent claims 38 and 86, it is noted that Wilbur lacks a teaching that the flexible sheet material is non-porous sheet material having a gauge in the range of about 0.0001 to 0.002 inches, and also lacks an express teaching about the wrapper's physical properties (conformable with a small resiliency). However, it is noted that Reed's invention is directed to a sheet material which is provided with a continuous coating of tacky, pressure-sensitive, adhesive. The adhesive coating is then provided with a coating of a discontinuous layer of resilient, non-adhesive particles. The coating of particles have the ability to be deformed under a load and thus, upon application to a support surface, deform, under pressure, to such an extent as to bring the adhesive and the surface into fuller contact (Abstract). As such, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to modify Wilbur's wrapper with Reed's coating of deformable particles, motivated by the desire to obtain a non-porous wrapper for fully wrapped (sealed) applications. As to the wrapper's thickness and physical properties (conformable and low resiliency), it is noted that Appellants have admitted that it is known art that sheet materials with clinging character (i.e., cling film) can be used to form a closure for a container (i.e., conformable) (specification, page 1, lines 18-26). As such, in the absence of unexpected results, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art of wrapper to modify Wilbur's wrapper with a suitable thickness and by selecting a known sheet material of physical properties, as admitted by Appellants, motivated by the desire to obtain a conformable wrapper for fully wrapped (sealed) applications.

For dependent claims 1, 11, 48, 75, 80-81, 91, 93, 95-96 and 101, Appellants have admitted that it is known art that a suitable wrap sheet materials (e.g., a cling film) can be used to form a closure for a container, as set forth above.

For dependent claims 2-10, 39-47, 87-90, 94 and 97-100, both Wilbur and Reed teach that the bonding is activated by pressing, as set forth above. Regarding the instantly claimed methods of use (i.e., direction of the pressure in relative to the sheet material, the amount of pressure, the adhesion peel force, and the selective activation of adhesion in discrete regions), the Examiner notes that these elements are not given any patentable weight patentable weight, because these methods of use fail to structurally distinguish the instant invention from the prior art.

For claims 13 and 50, Wilbur expressly teaches that the adhesive is permanently sticky or tacky, as set forth above.

For claims 14-15 and 51-52, Appellants admitted that polymeric materials such as PVC, PVDC and PE are commonly used to form a cling film (specification, page 1, 4th paragraph), and they are well known to be substantially translucent or transparent non-tacky film materials.

For claims 16-18 and 53-55, although Reed is silent about the height of the particles (protrusions), Reed does teach that the discontinuous coating of non-tacky resilient particles varies in size and distribution, depending on the area to be covered, the thickness of the adhesive, and the strength of the adhesive, etc. (column 2, lines 9-16). As such, it is the Examiner's position that suitable size (height) of the particles are

either anticipated by Reed, or an obvious optimizations to one skilled in the art, motivated by the desire to prevent premature adhesion.

II. Claims 12, 49, 92 and 102 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbur (US 2338749) in view of the admitted prior art, and further in view of Reed et al. (US 4054697) and Kovac (US 3819467).

The teachings of Wilbur, Reed and Appellants' admission are again relied upon as set forth above.

For claims 12, 49, 92 and 102, Wilbur lacks a teaching of coating adhesive on both sides of the sheet material. However, it is noted Kovac's invention teaches a double faced tape which seals to the inside of a wrapped frame (column 4, lines 4-9). As such, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to modify the teachings of Wilbur and Reed by coating adhesives on both sides of the wrapper, motivated by the desire to obtain a good seal around a wrapped container without loose film hanging away from the side of the container.

(10) Response to Argument

Appellants' argument "the cited combination of references taken together with the admitted prior art ... fails to teach or suggest a storage wrap material capable of forming a continuous seal upon a desired surface ... The Reed et al. reference adds to the Wilbur reference the element of resilient particles distributed upon a surface of the substrate. The particles are by definition non-adhesive. The particles are not removed from the substrate but remain in place after the substrate has been activated. A non-adhesive particle cannot form a seal with the target surface therefore the substrate of

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the imagined combination cannot form a continuous seal with the target surface since the boundary between the target surface and each particle will be unsealed.” (Remarks, page 3, last two paragraphs) has been carefully reconsidered, but is not persuasive. Specifically, Appellants appear to have confused about how the “continuous seal” is formed and therefore misplaced the location of the seal as being at “the boundary between the target surface and each particle.” The Examiner repeats that Reed’s invention is directed to a sheet material which is provided with a continuous coating of tacky, pressure-sensitive, adhesive. The adhesive coating is then provided with a coating of a discontinuous layer of resilient, non-adhesive particles. The coating of particles have the ability to be deformed under a load and thus, upon application to a support surface, deform, under pressure, to such an extent as to bring the adhesive and the surface into fuller contact (Abstract). In other words, the discontinuous non-adhesive particles are isolated spots on the surface of a continuous network of exposed surface of adhesive layer. Upon activation, the adhesive and the substrate inherently form a continuous seal, and the presence of the isolated spots of particles at the interface is irrelevant to the continuous seal formed by adhering the continuous network of exposed surface of adhesive layer to the substrate, Appellants’ argument to the contrary notwithstanding. Finally, the Examiner respectfully reminds Appellants that Figs. 2 and 3 of instant invention also show protrusions 12 formed of non-adhesive base sheet as isolated spots in a continuous network of adhesive layer 16 (specification, page 24), as such Appellants also appear to be arguing that the instant invention would fail to provide a continuous seal.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Victor S Chang
Examiner
Art Unit 1771



July 6, 2005

Conferees

Terrel H. Morris

Carol D. Chaney

-fm

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700